



### **QUESTION 1** (Compulsory)

Sabelo leases a one hectare farm from Sizakele. The lease agreement is according to the terms of the contract, to be valid for a period of two years. Sabelo takes occupation of the farm on the 9<sup>th</sup> of October 2016. Unbeknown to Sabelo, Sizakele is not the true owner of the farm, hence she lacks the capacity to lease the farm to him.

Sabelo only learns of this in May, 2018 when his attorney informs him of this. What had brought Sabelo to his attorney in the first place was that Sizakele had locked him out of the farm by changing the locks on the gate. This had the effect of depriving him access to his household property which is in the farm house. Sizakele locked the gate because Sabelo had been defaulting on his rental payments. He has failed to pay three (3) months rentals, and his last payment was in November, 2017. Sizakele locked the gates in March, 2018. Sabelo had in any event been away from the farm since June, 2017 as he was attending a conference in Zambia.

Sabelo approached his attorney and sought his help regarding an application to court for the remedy of the Mandament Van Spolie. You are an Articled Clerk at the office of Simelane & Mdluli Attorneys At Law. Your principal, Mr. Mdluli has instructed you to prepare a legal opinion on the following:

- i) Sabelo's relationship with the Land (farm) before he became aware of the invalidity of the lease agreement. Justify this response. (5 marks)
  - ii) Sabelo's relationship with the land after he became aware of the invalidity of the lease agreement. (5 marks)
  - iii) Between the spoliation remedy, and the Interdict, which is the most appropriate remedy in the given set of circumstances. This is in view of the fact that Sabelo had not set foot on the farm since he left for the conference in June, 2017. Cite relevant case law in support of your assertions. (15 marks)
- (Total: 25 Marks)

### **QUESTION 2**

- a) Discuss the "Subtraction from Dominion Test" in detail. In which case was it established, how and for what purpose is the test applied? Reference may be made to additional case law to support your assertions. (15 marks)
- b) Distinguish between the following:
  - i) Fungible and Non-fungible things. (5 marks)
  - ii) Res Nullius and Res Communes (5 marks)

In your responses explain these distinctions with reference to their legal consequences, and cite relevant case law where necessary. (Total: 25 marks)

### **QUESTION 3**

- a) Fana, the son of Melusi and Fikile, leases a portion of his parent's farm. When his father's farm implements are stolen. Fana allows his father to use some equipment which he has rented from "The Toolshed", in Mbabane. Melusi and Fana later have a falling out, and Melusi destroys the equipment in a fit of rage.

Indicate which remedy is available to Fana. What are the requirements to succeed? (10 marks)

- b) Employees from the Ezulwini Town Board, without notice, and without proper authority, start to break up a dam on Musa's farm, and dig trenches across his land. This is all part of an extensive sewerage system which also crosses Musa's Farm. While working on the farm, they use some of the farm implements that Musa bought on credit from "Cashbuild", at the Corner Plaza, in Ezulwini. The employees damage these implements quite extensively, and as a result they are rendered useless.

Discuss the remedy available to Musa, with reference to the requirements of that remedy, and cite case law. (15 marks)

(Total: 25 marks)

### **QUESTION FOUR**

Discuss the criteria employed by the courts to determine whether a movable thing is attached to an immovable thing by means of accession in such a manner that it has become immovable. In your response refer to three decided cases and illustrate how these decisions have assisted you in understanding the legal issues raised therein.

(25 marks)

### **QUESTION FIVE**

Mamba, a hunter, left his home on Friday morning for a one-man hunting expedition. At about 6 p.m. on the day in question, Mamba spotted a wild elephant. He shot it, and seriously wounded it in the process. The elephant, however, managed to escape, with Mamba in hot pursuit.

As it was quickly getting dark, Mamba decided to temporarily abandon the chase. He decided to continue the search at day break. He also needed a rest after such an arduous day.

He resumed the search the next morning, and he discovered that the elephant had been found by Zwane, who introduced himself as the founder of the Animal Rights Group of Eswatini. Zwane had brought two Veterinary Assistant who were busy administering treatment to the wounded elephant. Mamba demanded that the animal be handed over to him, but Zwane refused, and a heated argument ensued. It transpired during the verbal

exchange between the gentlemen that the elephant had previously been captured by the Animal Rights Group, and put it in protective custody for its own good. Zwane had been put in charge of the animal, and he had even named it Bob. Zwane then introduced Bob, the elephant, to a series of exercises which were intended to train it to perform certain tricks. In the last month, Bob had left his enclosure twice, but had always returned of his own accord. This was his third time out, and had been away for four days (which was the longest period that he had been away).

Mamba does not care about any of this, nor is he interested in the philosophy and/or politics of the Animal Rights Group. To him the elephant is simply his meat, which he desirous of taking home.

Give a legal opinion in which you discuss the following:

- i) The legal rights and remedies, if any, of Mamba. (12 marks)
  - ii) The legal rights and remedies, if any, of Zwane and the Animal Rights Group. (13 marks)
- (Total: 25 marks)

(25 marks)